



# EMPLOYMENT TRIBUNALS

**Claimant: Mr K Whittaker**

**Respondent: Silver Fox Hull Ltd**

Judgment having been given to the parties on 7 December 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## Reasons

1. The claimant represented himself and the respondent was represented by Mr Morgan, counsel.

2. I heard evidence from:

Karl Whittaker, the claimant;  
Paul Fletcher, Managing Director;  
Annette Fletcher, Office Manager;  
Odin Underdown, Employee;  
Richard Hill, Employee.

I had sight of a written witness statement by John Jenkinson, a former employee.

3. I had sight of a bundle of documents which was numbered up to page 214. I considered those documents to which I was referred by parties.

4. The claimant brought a complaint of unfair dismissal. The issue I had to decide was whether there had been a dismissal and, if so, was the dismissal for a potentially fair reason and if so, was it an unfair dismissal.

### The Law

5. This is a claim of unfair dismissal. The claimant was an employee and a Tribunal will have to determine whether there was a dismissal and, if so, was it for a potentially fair reason under section 98 of the Employment Rights Act 1996. It is denied by the respondent that there was a dismissal and it is contended that the claimant resigned.

6. The Tribunal has to consider whether ostensibly ambiguous words amount to a dismissal or resignation. The test is an objective one. All the surrounding circumstances must be considered. If the words are still ambiguous the Employment Tribunal should ask itself how a reasonable employer or employee would understand them in all the circumstances.

7. In the case of **Futty v Brekkes Ltd 1974 IRLA130** (a case relating to dismissal but a useful and colourful illustration of the approach to be taken to ambiguous words) a foreman on the Hull fish dock had a conversation with an employee which ended with the foreman saying "if you don't like the job, you can fuck off". The employee left and claimed that he had been dismissed. The Tribunal decided that, in the circumstances, and against the background of the fish dock and fish filleters, there was no dismissal but only a "general exhortation" to get on with the job.

8. An expression of an intention to resign at some future date will not amount to a resignation.

9. In the case of **Ely v YKK Fasteners (UK) Ltd 1994 ICR 164** it was found that the claimant had informed the respondent that he had a job in Australia and would be resigning in due course. The respondent asked the claimant to provide a leaving date but this was not provided as the claimant was still in the process of arranging his emigration. The respondent specified a date when the claimant's employment would end. The Employment Tribunal held that there had been no resignation. The claimant had not given the date when the contract was to be terminated and non-was ascertainable from the surrounding facts. The Tribunal was satisfied that the respondent had generally expected the claimant to resign and had been led to believe that the claimant would be supplying it with notice of termination in the near future. The Tribunal decided that the claimant had been dismissed for some other substantial reason. His late notification of his change of mind and that the respondent acted fairly and dismissing him for that reason. This finding was subsequently upheld by the Court of Appeal.

### **Findings of fact**

10. Having considered all the evidence, both oral and documentary, I make the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that I made from which I drew my conclusions.

11. The claimant was employed by the respondent from 29 June 2020 as an HGV class 1 Driver. He drove one of two vehicles that were dedicated to work for Mammoet.

12. On 4 July 2023 the Operations Manager of Mammoet informed the respondent by email that there was to be a change to the way they shipped trailers to the UK which would result in the occasional need to work on a Saturday. This email was forwarded to the claimant on 4 July 2023.

13. The claimant did not want to work on Saturdays. He said he had a telephone conversation with Paul Fletcher, director of the respondent in which the claimant stated that he would start looking for another job. Paul Fletcher said that the claimant stated:

“if they think I’m working on a Saturday they’re wrong, I’m leaving”

Paul Fletcher said that he replied:

“That’s fine I will accept your week’s notice but if you want to leave immediately I won’t make you work your notice.”

14. After the telephone conversation with Mr Fletcher, the claimant then contacted a friend who was a driver at another company. He received an indication that there was a potential job for him.

15. The claimant made it clear during the Tribunal hearing that his friend was only an HGV driver and was not in a position to offer him a job. He later sent his CV to the Regional Transport Manager of the other transport company but he did not actually receive a job offer.

16. Enquiries were made by the respondent and a temporary driver was found who was due to start on 17 July 2023. That driver did not take up the temporary post and Richard Hill started working for the respondent on 12 July 2023.

17. On 11 July 2023 Mr Fletcher informed the claimant that he should go home and that he would be paid until the end of the week.

18. I heard some evidence with regard to the surrounding events. I took that into account, however, the contents of the discussion between the claimant and Paul Fletcher were central to the question of whether there was a resignation or dismissal and that discussion was only between the two of them with no witnesses.

19. I have the benefit of submissions from Mr Morgan and the claimant. These were helpful. They are not set out in detail but both parties can be assured that I have considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

## **Conclusions**

20. I have carefully considered all the evidence, both oral and documentary in reaching my conclusions.

21. I have to decide whether there was an unambiguous act of resignation.

22. It is agreed that the claimant had later told the respondent that he had made enquiries and there was a possibility of another job coming up.

23. Mr Fletcher said that the claimant had said that, if they think I’m working on a Saturday they’re wrong – I’m leaving.

24. There was a dispute about whether Mr Fletcher had indicated that he accepted that the claimant had given notice. The evidence of Paul Fletcher was hesitant at times and there was an element of confusion on the part of the respondent with regard to details and dates. I find,

on balance, that it was not established that Mr Fletcher had said that he had accepted that the claimant had given notice.

25. I have considered all the evidence and I find, on balance, that the claimant had said to the respondent that he was leaving if they thought he was going to work on Saturdays.

26. I have considered the position taking into account all the surrounding circumstances and I find that the wording used by the claimant was ambiguous and it was not a clear resignation. The claimant had signified an intention to move jobs.

27. The statement by the claimant to Mr. Fletcher was conditional and not a clear resignation. There was the possibility of another job coming up and the claimant had indicated that if he was required to work on a Saturday, he would be leaving.

28. In those circumstances, I am satisfied that, on the balance of probabilities, the claimant's employment came to an end when the claimant was told on 11 July 2023 that he would be finishing on 14 July 2023 as the respondent had found another driver who was due to start on 17 July 2023.

29. This was a dismissal and, as there was no potentially fair reason, it was an unfair dismissal and the claim succeeds.

## **Remedy**

I make the following award:

### **Basic award**

4.5 x gross weekly pay at the statutory maximum of £643	£2,893.50
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### **Compensatory Award**

Loss of statutory protection	£500.00
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Average weekly net pay £663.58 x 7.4 weeks loss of earnings (It was not contended that there was a failure to mitigate)	£4,910.49
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Pension loss	£158.73
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<b>Total award</b>	<b>£8,462.72</b>
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**Case No: 1804684/2023**

**Employment Judge Shepherd**

**Date: 12<sup>th</sup> January 2024**

**JUDGMENT SENT TO THE PARTIES ON**

**Date: 15<sup>th</sup> January 2024**

.....  
**AND ENTERED IN THE REGISTER**

.....  
**FOR THE TRIBUNAL OFFICE**